

Exemptions
ORS 23.170

Sticka v. Wilbur Civil No. 96-6076-HO
(In re Wilma Wilbur 695-62129-fra7)

6/8/96 Hogan, J. Unpublished

District Court (Hogan, J) affirming an oral ruling of Judge Alley.

The debtor received \$3,000 approximately six weeks after filing her Chapter 7 petition. The money was part of the \$16,750 awarded to her in state court, \$16,000 of which represented approximately ½ of the \$33,000 which was her former spouse's accumulated retirement benefits in PERS. The bankruptcy court ruled that the \$3,000 was part of the debtor's portion of the PERS account and was thus exempt from the bankruptcy estate. The trustee appealed.

In affirming the bankruptcy court, the District Court held that the debtor qualified as a beneficiary of the PERS account under state law . The amounts received by the debtor were thus exempt under ORS 23.170.

NOTE: This District Court opinion was subsequently reversed. See E97-23(3).

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U.S. DISTRICT COURT
DISTRICT OF OREGON



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

RONALD STICKA,)	
)	
Appellant,)	Case No. 96-6076-HO
)	
v.)	ORDER
)	
WILMA WILBUR,)	
)	
Respondent.)	
_____)	

This is an appeal of a bankruptcy court order. Trustee Ronald Sticka is the appellant, and debtor Wilma Wilbur the respondent. This court has jurisdiction under 11 U.S.C. § 158(b)(2).

FACTS

Wilma Wilbur filed a chapter seven bankruptcy proceeding on June 5, 1995. On July 21, 1995, she received \$3000 from her former domestic partner in accordance with a state court judgment entered on April 21, 1993 in Wilbur v. DeLapp, 850 P.2d 1151, 119 Or.App. 348 (Or.App. 1993). That judgment ordered Mr. DeLapp to pay Ms. Wilbur \$16,750 in

\$3000 annual installments. \$16,000 of that amount "represent[ed Wilbur's] contribution to the parties' financial provisions for retirement," constituting roughly half of the \$33,000 in Public Employees' Retirement System (PERS) benefits DeLapp had accumulated. *Id.*, 850 P.2d at 1154 and 1152.

The bankruptcy judge ruled orally that appellant's portion of the PERS benefits is exempt from the bankruptcy estate. The judge's reasoning was that Wilbur's portion represented an interest in a PERS account, and PERS accounts are exempt. *See* Excerpt of Record (ER) (#30) at 44. Respondent filed a motion for reconsideration, and the judge issued a letter denying the motion on the ground that the state court entered "a decree distributing a portion of the PERS fund to the debtor." ER (#30) at 51.

DISCUSSION

The parties agree the bankruptcy court's ruling should be reviewed *de novo*. Appellant's Opening Brief (#29) at 2; Appellee's Opening Brief (#33) at 2.

Respondent has cited several statutes as exempting the \$3,000 annual payments from her bankruptcy estate. One such statute is ORS 23.170, which provides in part:

(2) Subject to the limitations set forth in subsection (3) of this section [exceptions for fraudulent transfers or support obligations], a retirement plan shall be conclusively presumed to be a valid spendthrift trust under these statutes and the common law of this state, whether or not the retirement plan is self-settled, and a beneficiary's interest in a retirement plan shall

be exempt, effective without necessity of claim thereof, from execution and all other process, mesne or final.

ORS 23.170(a) defines "beneficiary" as "a person for whom retirement plan benefits are provided and their spouse."

ORS 23.170(1)(d)(C) defines "retirement plan" to include

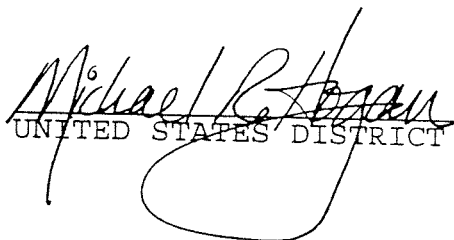
Any pension . . . granted to any person in recognition or by reason of a period of employment by or service for . . . any . . . person. . . .

The state court opinion indicates that the \$16,000 was awarded to respondent as her share of the retirement benefits, making her a "beneficiary" of a "retirement plan" as those terms are defined above. Accordingly, ORS 23.170 exempts that amount from respondent's bankruptcy estate.¹

CONCLUSION

The decision of the bankruptcy court is affirmed.

DATED this 23~~rd~~ day of May, 1996.


UNITED STATES DISTRICT JUDGE

¹ Though the state court awarded Ms. Wilbur \$16,750, payable in \$3000 annual installments, only \$16,000 of this represents her interest in retirement assets. The court leaves it to the parties to calculate the exempt and includable proportions of the annual installments.

U.S. BANKRUPTCY COURT
DISTRICT OF OREGON
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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

RONALD STICKA

Appellant,

v.

Civil No. 96-6076-HO

WILMA WILBUR

Respondent.

95-62129 fra

JUDGMENT

The decision of the bankruptcy court is affirmed.

Dated: June 3, 1996.

Donald M. Cinnamond, Clerk

by *Lea Force*

Lea Force, Deputy

JUDGMENT

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